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Supreme Court, U.S.
FILED
NOV 2 0 2003
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No. 03-7434

In the
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2003

DANIEL BENITEZ, *Petitioner*

v.

JOHN MATA, *Respondent.*

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITIONER'S REPLY MEMORANDUM

JOHN S. MILLS
Counsel of Record
TRACY S. CARLIN
REBECCA BOWEN CREED
Mills & Carlin, P.A.
865 May Street
Jacksonville, Florida 32204
(904) 350-0075
Counsel for Petitioner

The parties agree that there is a clear split among the circuits, which has widened since the petition was filed, *see Sierra v. Romaine*, 347 F.3d 559 (3d Cir. 2003), and that this case presents both statutory and constitutional issues of tremendous public importance. Mr. Benitez does not, of course, agree with the legal arguments on the merits made in the Government's Brief, but will defer argument on these issues to merit briefing in the event this Court grants review.

Mr. Benitez does emphasize, however, that he does not believe that the Notice of Releasability, which was not received by the undersigned after he filed the Petition for a Writ of Certiorari, will render this proceeding moot. This is the second Notice of Releasability Mr. Benitez has received. The last one provided for his release into a halfway house. He was advised at that time that it would take anywhere from one month to a year for him actually to be released from incarceration. He was never released. Instead, over a year later that notice was rescinded based on an unsupported claim that he had a role in an escape attempt by other inmates.[1]

The immigration official serving him with the latest Notice of Releasability gave him the same time line – one month to a year. The notice itself states that he

[1] Mr. Benitez has never been given an opportunity to respond to or challenge this allegation and he flatly denies any involvement in an escape attempt. The only evidence of any involvement appears to be that a number of inmates who tried to escape from a state prison facility at which Mr. Benitez was incarcerated happened to have the same ethnicity as Mr. Benitez.

will not be placed in such a facility until "space becomes available." Thus, the Government's estimations that it "is expected" that he will be placed in a residential substance abuse program[2] no sooner than February 2004 and released from the program no sooner than July 2004 are likely too optimistic. His release, if at all, is likely to take substantially longer.

Moreover, even if he somehow is released before this Court decides this case, the case would not become moot. As the Sixth Circuit has explained, release on parole under the Cuban Review Plan does not moot a challenge to the Government's authority to indefinitely detain a Mariel Cuban:

> Although Rosales is not currently being detained, his immigration parole can be revoked by the INS at any time for almost any reason. Unlike parole granted following incarceration for a criminal conviction, Rosales need not do anything for the INS to revoke his parole; for instance, the INS can revoke Rosales's parole if it deems such revocation to be "in the public interest." *See* 8 C.F.R. § 212.12(h) (2002). Thus, Rosales's "release" into the United States does not constitute a termination of detention; it simply constitutes a reprieve from detention. Under these circumstances, we believe that Rosales is threatened with an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision. We therefore conclude that Rosales's appeal is not moot.

Rosales-Garcia v. Holland, 322 F.3d 386, 395-96 (6th Cir. 2002) (en banc) (footnotes omitted). Full argument on this issue would only be necessary if Mr. Benitez is released before this Court could decide his case.

[2] Mr. Benitez has never been charged with any crime relating to controlled substances and has passed every single drug test he has been given.

For the foregoing reasons, this Court should grant a writ of certiorari to review the decision of the Eleventh Circuit.

Respectfully Submitted,

JOHN S. MILLS
Counsel of Record
TRACY S. CARLIN
REBECCA BOWEN CREED
Mills & Carlin, P.A.
865 May Street
Jacksonville, Florida 32204
(904) 350-0075

Counsel for Petitioner

NOVEMBER, 2003